

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 29, 2012

In the Matter of JT/XT/JT, Minors.

No. 307114

Ingham Circuit Court

Family Division

LC No. 11-000056-RL

11-000057-RL

11-000058-RL

Before: M.J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the circuit court's orders terminating her parental rights to the minor children pursuant to her release of her parental rights. MCL 710.29(7). We affirm.

Respondent's children became temporary court wards in 2010. Respondent failed to participate in reunification services and the Department of Human Services filed a supplemental petition to terminate her parental rights under MCL 712A.19b(3). Respondent then voluntarily released her parental rights.

Respondent now contends that her releases were not knowing, understanding, and voluntary. Respondent failed to raise this issue in an appropriate motion in the trial court. MCL 710.29(10); MCL 710.64(1). Therefore, the issue has not been preserved for appeal. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Accordingly, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008).

A release "is valid if executed in accordance with the law at the time of execution." MCR 3.801(B). The release must be executed by the parent before a judge of the court or a referee. MCL 710.28(1)(a); MCL 710.29(1). The parent must also execute a verified statement containing certain information prescribed by statute. MCL 710.29(5). However, the release may not be executed "until after the investigation the court considers proper and until after the judge" or referee fully explains to the parent her legal rights and the fact that those rights will be relinquished permanently. MCL 710.29(6); *In re Blankenship*, 165 Mich App 706, 711-712; 418 NW2d 919 (1988). Further, if the child is over the age of five, the court must find "that the child is best served by the release." MCL 710.29(6). Upon the release by the parent, the court is to immediately enter an order terminating that parent's rights to the child. MCL 710.29(7). Once

parental rights have been terminated, the parent may file a motion to revoke the release or request rehearing. MCL 710.29(10); MCL 710.64(1); MCR 3.806(A). A parent's change of heart alone is not a ground for setting aside a release that is otherwise knowingly and voluntarily made after proper advice of rights is given by the court. *In re Burns*, 236 Mich App 291, 292-293; 599 NW2d 783 (1999); *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992); *DeBoer v Child & Family Servs of Mich, Inc*, 76 Mich App 641, 645; 257 NW2d 200 (1977).

The record discloses that the trial court properly advised respondent of the rights she would be giving by executing the releases. Thus, the releases were knowingly executed. The record also shows that respondent executed the verified statements that contain the requisite information and that respondent waived her right to counseling. Respondent acknowledged on the record that she was aware that she did not have to execute the releases if she did not want to, that the releases were not induced by any threats or promises, and that, "knowing everything we've talked about," she still wanted to release her parental rights. Thus, the releases were also voluntarily executed. Although respondent claims that she "wasn't thinking right," she advised the court that she understood her rights and otherwise answered questions appropriately, and there is nothing in the record to indicate that her ability to make an informed and voluntary decision was impaired. In fact, respondent specifically acknowledged that she did not have "any trouble at all understanding" the proceeding. The fact that respondent was facing involuntary termination of her parental rights under the Juvenile Code does not make the decision any less voluntary where, as here, respondent was advised that "this is something that you do not have to do" and that she could not be forced to release her parental rights.

Respondent contends that the trial court erred in advising her of her rights because, while it informed her of her right to request a rehearing, it did not also advise her that the request would not be granted based solely on a change of heart. As respondent concedes, however, such advice is not required by law. See *In re Burns*, 236 Mich App at 292-293. Respondent's reliance on the dissenting opinion in *In re Curran* is misplaced. In addition to the fact that a dissenting opinion is not controlling, the dissenting judge in that case opined that it was error not to provide such advice because the respondent claimed that she was somehow misled into believing "that a change of heart or mind would be honored" by the court's advice regarding the time limits for seeking rehearing or filing an appeal. *In re Curran*, 196 Mich App at 385-386 (KELLY, J., dissenting). In this case, respondent does not claim that the trial court's advice was improper or misleading. Moreover, the court specifically advised respondent that while she had the right to seek rehearing or to appeal the termination orders, "[i]t doesn't necessarily mean it would be granted," which was sufficient to indicate that whatever the reason for the motion or appeal, there was no assurance that respondent would prevail.

In sum, because respondent has not shown any error during the release proceeding, and because the record indicates that respondent's release was knowingly and voluntarily made, respondent is not entitled to any relief.

Affirmed.

/s/ Michael J. Kelly

/s/ Kurtis T. Wilder

/s/ Douglas B. Shapiro